

STATE OF MINNESOTA

CITY OF SAINT PAUL

COUNTY OF RAMSEY

HUMAN RIGHTS COMMISSION

W. H. Tyrone Terrill, Director
St. Paul Department of Human Rights
ex rel. Willie White,

Complainants,

OAH No. 8-2111-12468-3

vs.

**LEGAL INSTRUCTIONS TO THE
PANEL OF COMMISSIONERS**

The Court Apartments, owned
By James Marty,

Respondent.

In accordance with the St. Paul Human Rights Department's Rules of Procedure for Enforcement Proceedings^[1] and the St. Paul City Code,^[2] the undersigned Law Officer, having been duly appointed by Resolution of the City, submits the following Legal Instructions to the Panel of Commissioners (the Panel) in this civil enforcement proceeding.

1. This civil enforcement proceeding arises under Chapter 183 of the St. Paul City Code. The City Code^[3] gave the Law Officer authority to preside over the hearing in this matter and gives him authority to issue these Legal Instructions to the Panel. The City Code^[4] also gives the Panel authority to conduct deliberations in this proceeding, to make findings of fact, and to issue an order.

2. The City of St. Paul, Human Rights Department (the City), has complied with all of the City Code's substantive and procedural requirements for maintaining this civil enforcement proceeding.

3. The City gave Court Apartments proper and timely notice of the hearing in this matter.

4. On July 27, 1999, the City began this civil enforcement by issuing a Notice of Hearing and Complaint on behalf of the Complainant, Willie White, and by serving that document on the Respondent, Court Apartments. The Complaint alleged that Court Apartments had committed discrimination against Mr. White in real property in violation of Chapter 183 of the City Code on the basis of Mr. White's familial status. On August 23, 1999, Court Apartments filed an Answer to the City's Complaint in which it denied having unlawfully discriminated against Mr. White and raised certain other defenses. The Law Officer conducted a hearing in this civil enforcement proceeding on

August 25 and September 28, 1999, and the parties presented evidence in support of their respective positions at that hearing. Based on that evidence, it is now the duty of the Panel to deliberate, to make findings of fact, and to issue an order in this proceeding.

5. Section 183.06 of the City Code deals with discrimination in real estate. Subsection (1) of Section 183.06 contains the following provisions that relate to the claims made in this proceeding:

It is an unfair discriminatory practice:

(1) For an owner, lessee, sublessee, assignee, or managing agent of or other person having a right to sell, rent or lease any real property, or any agent of any of these:

a. To discriminate by refusing to sell, rent, lease or otherwise deny to or withhold from any person or group of persons any real property . . . or otherwise deny or withhold any property or any facilities of real property to or from any person or group of persons; or

b. To discriminate against any person or group of persons in the terms, conditions or privileges of the sale, rental or lease of any real property or in the full and equal enjoyment of services, facilities, privileges and accommodations or in the furnishing of facilities or services in connection therewith; except that nothing in this clause shall be construed to prohibit the adoption of reasonable rules intended to protect the safety of minors in their use of real property or any facilities or services furnished in connection therewith;

6. Section 183.02, subsection (1) of the City Code defines the term “familial status” in the following way:

(5) *Familial status* means the condition of one (1) or more minors being domiciled with their parent or parents or legal guardian or the designee of the parent or parents or legal guardian. The protection afforded against discrimination on the basis of familial status applies to any person who is pregnant or is in the process of securing legal custody of an individual who has not attained the age of majority.

7. Section 183.02, subsection (16) of the City Code defines the term “person” in the following way:

(16) *Person* includes individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, receivers, political subdivisions, boards, commissions, and their officers and agents.

Court Apartments is a person within the meaning of Chapter 183 of the City Code.

8. Section 183.02, subsection (23) of the City Code defines the term “real property” in the following way:

(23) *Real property* includes real estate, tenements and hereditaments, corporeal or incorporeal.

The apartment where Willie White and his family lived at the Court Apartments was real property within the meaning of Chapter 183 of the City Code.

9. Because of the similarity of Chapter 183 of the City Code to the Minnesota Human Rights Act (MHRA),^[6] the Panel should employ the approach to adjudicating discrimination claims that Minnesota’s courts and administrative tribunals use in adjudicating claims brought under the MHRA.

10. In civil actions and administrative contested case proceedings brought under the MHRA, the complainant has the burden of proving by a preponderance of the evidence that the Respondent committed unlawful discrimination.

11. “Preponderance” means greater weight of the evidence. It means that all of the evidence, regardless of which party may have produced it, must lead the Panel to believe that the fact at issue is more likely true than not true. Greater weight of the evidence does not necessarily mean the greater number of witnesses or the greater volume of evidence. Any believable evidence may be enough to prove that a disputed fact is more likely true than not.^[6]

12. In considering whether a discriminatory action has occurred under the MHRA, state courts and administrative tribunals apply the principles expressed by the U. S. Supreme Court in *McDonnell-Douglas Corp. v. Green*.^[7] As applied to this civil enforcement proceeding, the *McDonnell-Douglas* test consists of the following three-step analysis: The City and Mr. White are first required to establish a *prima facie* case of unlawful discrimination. If they succeed in doing that, a presumption, or inference, arises that unlawful discrimination may have occurred. Although the burden of proof always remains with the City and Mr. White, the burden of producing evidence then shifts to Court Apartments to present evidence of some legitimate, non-discriminatory reasons for its actions. If Court Apartments, in turn, has come forward with evidence of legitimate, nondiscriminatory reasons for its actions, then there is no longer any inference that unlawful discrimination has occurred, and the burden of producing evidence shifts back to the City and Mr. White. They must then prove by a preponderance of the evidence that the reasons or justification given by Court Apartments for its actions amount to a pretext for intentional discrimination.^[8]

13. What constitutes the required, initial *prima facie* showing by a complainant varies from case to case, depending on the kind of discrimination being alleged and the particular factual pattern and context.^[9] Here, a *prima facie* case consists of: (1) evidence that Mr. White was a member of a class protected by Chapter 183 of the City Code — i.e., a “family”; (2) evidence that Court Apartments withheld or took an adverse action against a leasehold interest that Mr. White was enjoying — i.e.,

evicted him or restricted his barbecuing activities; and (3) evidence that Court Apartments treated Mr. White and his family differently from the way that they treated tenants without children.^[10] Here, as a matter of law, the City and Mr. White did establish the *prima facie* case that the law required them to establish.

14. Since the City and Mr. White were able to establish a *prima facie* case, the burden of producing evidence then shifted to Court Apartments. It was required to produce evidence of legitimate, nondiscriminatory reasons for treating Mr. White and his family differently from the way that tenants without children were treated. Here, Court Apartments did present evidence that would allow the Panel to find that it had legitimate, nondiscriminatory reasons for the actions that it took against Mr. White and his family. So the burden of producing evidence therefore has now shifted back to the City and Mr. White to establish by a preponderance of the evidence that the reasons that Court Apartments gave for the actions that it took against Mr. White and his family were pretextual and that Court Apartments' real motive was to discriminate against Mr. White on the basis of his familial status.

15. Despite the shifting burden of producing evidence, it is important for the Panel to remember that the burden of proving that Court Apartments engaged in intentional discrimination *always remains* with the City and Mr. White.^[11] For example, even if the Panel were to find that the reasons Court Apartments gave for the actions it took against Mr. White and his family were not its real reasons, the City must still prove that the real reason was intentional discrimination against Mr. White because of his familial status. Otherwise, the City has not met its burden of proof in this proceeding.

16. So, some key facts that the Panel must make findings on here relate to the third step of the *McDonnell-Douglas* analysis, namely, the Panel must decide whether the reasons that Court Apartments has given for acting against Mr. White and his family were legitimate and nondiscriminatory reasons or whether they were mere pretexts for intentional discrimination.

17. Section 183.02, subsection (5) defines the terms "discriminate" or "discrimination" in the following way:

(5) *Discriminate* or *discrimination* includes all unequal treatment of any person by reason of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status or status with regard to public assistance. For purposes of discrimination based on sex, it includes sexual harrassment.

18. For discrimination to be unlawful, it must be proved to have been "intentional." In other words, the City must establish by a preponderance of the evidence that Court Apartments had a discriminatory "intent" when it acted against Mr. White and his family.^[12]

19. “Intent” means that a person (a) wants to cause the consequences of his or her acts, or (b) knows that his or her actions are substantially certain to cause those consequences.^[13]

20. A fact can be proved in one of two ways: (a) by “direct evidence” when that fact is proved directly without any inferences, or (b) by “circumstantial evidence” when the fact can be inferred from other facts proved in the case. So, the City may sustain its burden of proving discriminatory intent, as required by the third step of the *McDonnell-Douglas* test, either directly, by presenting direct evidence of a discriminatory motive, or circumstantially, for example, by showing that the explanations that Court Apartments has offered are unworthy of belief.^[14] The Panel may consider both kinds of evidence. The law makes no distinction between the weight given to either direct or circumstantial evidence. It is up to the Panel to decide how much weight to give any kind of evidence, so long as the inferences that it makes are reasonably justified by the evidence in the case.^[15]

21. The City Code^[16] incorporates some rules about the evidence that a Law Officer may allow at a hearing, and it was the Law Officer’s duty to make sure that the attorneys followed those rules. Attorneys may have objected if they thought that a question or answer was against the rules. In that regard, if the Law Officer sustained an objection, the Panel must ignore the question or answer. On the other hand, if the law officer overruled an objection, the answer to the question is evidence in this case. The objections themselves were not evidence, and the fact that some evidence may have been objected to should not affect the Panel’s view of the evidence.^[17]

22. After completing its deliberations, if the Panel concludes that the City and Mr. White have not established their claims by a preponderance of the evidence, it should prepare an order dismissing the City’s complaint.

23. On the other hand, if the Panel concludes that a violation of Section 183.06 of the City Code has occurred, the City Code contains the following provisions, among others, about the kinds of relief that panels may award to successful complainants:

If, after hearing, the panel shall conclude that a violation has occurred, it shall prepare an order which may require the respondent to pay a complainant, who has suffered discrimination, compensatory damages in an amount up to three (3) times the actual damages sustained. The panel may also order the respondent to pay a complainant who has suffered discrimination, damages for mental anguish or suffering, in addition to punitive damages in conformance with Minnesota law.

The order may include provisions which require the respondent to rent, sell or lease particular real estate property to the complainant . . . file periodic compliance reports, or to do any other thing as may be just. If a lessor, after engaging in a discriminatory practice defined in Section 183.06, leases or rents a dwelling unit to a person who had no knowledge

of the practice of the existence of a charge with respect to the practice, the lessor shall be liable for actual damages sustained by a person by reason of a final order requiring the person to be evicted from the dwelling unit. The panel's order may also require the respondent to pay for investigation and enforcement costs and reasonable city attorney's fees.^[18]

24. If the Panel finds that the evidence supports a claim for compensatory damages, it must make findings of fact relating to any compensatory damages that it may award. The term "compensatory damages" means a sum of money that will fairly and adequately compensate a person who has been harmed for any past or future injury or harm that that person may have sustained. Compensatory damages may include both past and future harm, but the City and Mr. White must have proved that any future harm is reasonably likely to occur.^[19] The City and Mr. White have the burden of proving any damages caused by Court Apartments by a fair preponderance of the evidence.^[20] They must also prove the nature, extent, duration, and consequences of any injury or harm they are claiming. The Panel may not decide damages based on speculation or guess.^[21]

25. Compensatory damages include any damages for mental anguish or suffering that Mr. White may have experienced in the past or is reasonably certain to experience in the future. The Panel must make findings of fact relating to any damages for past or future mental anguish or suffering that it may award. In so doing, it should consider the type, extent, and severity of any mental anguish or suffering, the length of time that they lasted or are reasonably certain to last, and any other factors that the Panel considers to be relevant.^[22]

26. Finally, if the Panel were to find that there is clear and convincing evidence that Court Apartments acted with deliberate disregard for the rights or safety of others, it can award "punitive damages." Punitive damages are intended to punish a respondent and discourage others from acting in a similar way. But the evidence must convince the Panel that Court Apartments acted with deliberate disregard for the rights and safety of others. And the Panel must also have a firm belief, or be convinced there is a high probability that Court Apartments acted in this way.^[23]

27. "Deliberate disregard" means that Court Apartments knew about facts or intentionally ignored facts that created a high probability of injury to the rights or safety of others, and that it deliberately acted with conscious or intentional disregard, or with indifference to the high probability of injury to the rights or safety of others.^[24]

28. If the Panel finds that the legal criteria for punitive damages have been met here, it should also make findings to that effect. And it should then consider the following factors, among others, in fashioning any punitive damage award:

- a. Any profit that Court Apartments may have made as a result of its misconduct;

b. The length of time of the misconduct and if Court Apartments hid it;

c. The attitude and conduct of Court Apartments when misconduct was discovered;

d. The number and level of employees involved in causing or hiding the misconduct;

e. The financial state of Court Apartments; and

f. The total effect of other punishment likely to be imposed on Court Apartments as a result of the misconduct. This includes compensatory damages and punitive damage awards.^[25]

29. Finally, after preparing its order in this civil enforcement proceeding, the City Code requires the Panel to take the following steps:

The panel's findings of fact and order shall be served on the complainant and respondent and each member of the commission by mail and shall become the findings and order of the commission and the department unless within thirty (30) days after mailing of the findings and the order, the commission shall revoke or amend the order and/or findings.^[26]

Respectfully submitted this _____ day of January, 2000.

JON L. LUNDE
Law Officer

^[1] Rule 3.06.

^[2] Section 183.24.

^[3] *Id.*

^[4] *Id.*

^[5] Minnesota Statutes, Chapter 363.

^[6] 4 MINNESOTA DISTRICT JUDGES ASSOCIATION, MINNESOTA JURY INSTRUCTION GUIDES—CIVIL § 14.14 at 37 (4th Ed. 1999) (hereinafter 4 CivJIG).

^[7] 411 U.S. 792, 802-03 (1973). See *Hubbard v. United Press International, Inc.*, 330 N.W.2d 428 (Minn. 1983) and *Danz v. Jones*, 263 N.W.2d 395, 399 (Minn. 1978).

^[8] *Id.*

^[9] *Sigurdson v. Isanti County*, 386 N.W.2d 715, 720 (Minn. 1986).

^[10] See Section 183.02(5) of the City Code.

^[11] *Sigurdson v. Isanti County*, 386 N.W.2d 715, 720 (Minn. 1986); *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 515 (1993); *Hasnudeen v. Onan Corp.*, No. CX-94-2106 slip op. at 2 (Minn. Aug. 29, 1996), *rev'g*, 531 N.W.2d 891 (Minn. App. 1995).

^[12] *Sigurdson, supra*, 386 N.W.2d at 720.

^[13] 4A CivJIG § 60.10 at 4. See also *Victor v. Sell*, 222 N.W.2d 337, 340 (Minn. 1974); see also *R.W. v. T.F.*, 528 N.W.2d 869, 872 (Minn. 1995).

^[14] *Sigurdson*, 386 N.W.2d at 720, quoting *Burdine*, 450 U.S. at 255-56.

^[15] 4 CivJIG § 12.10 at 25-26. *Illinois Farmers Ins. Co., v. Brekke Fireplace Shoppe, Inc.*, 495 N.W.2d 216 (Minn. App. 1993).

^[16] Section 183.24(4).

^[17] 4 CivJIG § 10.30 at 12.

^[18] Section 183.24(6).

^[19] 4A CivJIG §§ 90.10 at 298 and 90.20 at 301.

^[20] *Canada v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997).

^[21] *Id.*

^[22] 4A CivJIG §§ 91.10 at 309-10 and 91.25 at 315.

^[23] 4A CivJIG § 94.10 at 356-57.

^[24] *Id.*

^[25] 4A CivJIG § 94.10 at 356-57.

^[26] Section 183.24(7) of the City Code.